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December 11, 2019

**Briefing Note to General Council Members on
Possible Removal of Khà Shâde Hénì Agenda Item
General Council January 26 2019**

Background:

In 2017, a Carcross/Tagish First Nation (C/TFN) staff member (staff member #1) was approached by Khà Shâde Hénì Carvill who made an inappropriate comment to her. She informally complained to another staff member (staff member #2) to explore her options. After 2 breaches of confidentiality (staff member #2 and #3), the informal complaint made it's way back to Khà Shâde Hénì Carvill, who then called the staff member into his office and recorded an apology/acceptance of an apology.

A legal opinion on how C/TFN can address sexual harassment experienced by one or more of the organization's employees was obtained. The memo included a process to be followed based on the *Canada Labour Code*, case law and C/TFN's own policies.

C/TFN followed the advice given in the legal opinion and facilitated the informal resolution process outlined in C/TFN's Personnel Policy 1-535 Workplace Conflict Resolution with staff member #1. C/TFN also formally reprimanded against staff member #2 and #3 for the breach of confidentiality.

On December 7, 2018 this matter was brought forward to Executive Council, as it had become one of the subjects presented in a *Canada Labour Code* Complaint against C/TFN (by staff member #2). At that time, Khà Shâde Hénì admitted to Executive Council that this had taken place, that he had continued working with staff member #1 and that he would pay any possible settlement amount to staff member #2.

After hearing this information, Executive Council members directed that this briefing note and the attached resolutions be brought to the General Council. Khà Shâde Hénì Carvill was in the meeting when this direction was given.

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Costs to the First Nation:

The harassing behaviour has resulted in significant costs to the First Nation. The initial legal opinion cost several thousand dollars. If the employment complaint by staff member #2 is upheld against C/TFN on the basis of the breach of confidentiality/harassment, the costs would include our insurance deductible for legal costs (\$10,000), any damage award made by the arbitrator plus the staff time spent on this matter. Because the harassment/confidentiality issue has been identified by the arbitrator as potentially having merit, Executive Council has authorized settlement discussions up to the cost of \$15,000.

Other Considerations:

Confidentiality. Naming of staff members involved could result in further legal proceedings, as could retribution against staff – we are bound by the *Canada Labour Code* and our own Personnel Policies to respect the privacy of employees and ensure a safe, healthy workplace.

Pursuant to the C/TFN's policies, this matter was resolved at the informal stage. There has been no formal investigation of this complaint, as it was not a formal complaint.

Further legal consequences. C/TFN has an ongoing responsibility to protect all staff, including staff member #1. If the informal resolution of the harassing behaviour is breached and staff member #1 feels harassed again, C/TFN could face additional legal consequences

Procedural fairness. The General Council has discretionary power to remove a Khà Shâde Hénì or may determine some other resolution to the issue being brought by Executive Council. But C/TFN, including General Council, has an obligation to exercise their power in a manner that is procedurally fair.